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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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09/200,119

11/25/98

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EXAMINER

HM12/1117

GREGG C BENSON
PFIZER INC
EASTERN POINT ROAD
GROTON CT 06340

PAPER NUMBER

11

1623

DATE MAILED:

11/17/00

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 10/16/00☒ This action is FINAL.☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-9 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-6 and 8-9 is/are rejected.
- ☒ Claim(s) 7 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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Claims 4-6 and 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bailey et al or Thylefors for the reasons set forth in the Office Action of April 11, 2000.

Applicant's arguments filed October 16, 2000 have been fully considered but they are not persuasive.

It is noted that Bailey et al and Thylefors do not disclose applying azithromycin topically to the eye. Therefore, applicant's arguments have been found persuasive with respect to the method claims. However, the instant composition claims 4-6 and 9 encompass nothing more than an old compound azithromycin in water. Therefore, the claimed compositions are not patentable over the art of record.

Claims 1-6 and 8-9 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over First Meeting of the WHO Alliance For The Global Elimination of Trachoma, Geneva, 30 June-1 July 1997) for the reasons set forth in the Office Action of April 11, 2000.

Applicant's arguments filed October 16, 2000 have been fully considered but they are not persuasive.

Applicant contends that the reference does not disclose a topical formulation for azithromycin. This argument has been found persuasive with respect to claim 7 which recited a specific formulation. However, claims 1-6 and 8-9 read on nothing more than applying

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azithromycin to an eye. Therefore, the claimed methods and compositions are not patentable over the above cited reference.

Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elli Peselev whose telephone number is (703) 308-4616. The examiner can normally be reached on weekdays from 9.30 a.m. to 6.00 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Geist, can be reached on (703) 308-1701. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

elli Peaselev
ELLI PESELEV
PRIMARY EXAMINER
GROUP 1200